

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q67666	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	10/026,690	December 27, 2001	
	First Named Inventor		
	Stefaan Jozef DE CNODDER		
	Art Unit	Examiner	
	2619	Anthony M SOL	
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number <u>59,043</u></p> <p style="text-align: right;"><u>/Mark E. Wallerson/</u> Signature</p> <p style="text-align: right;"><u>Mark E. Wallerson</u> Typed or printed name</p> <p style="text-align: right;"><u>(202) 293-7060</u> Telephone number</p> <p style="text-align: right;"><u>March 25, 2008</u> Date</p>			

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q67666

Stefaan Jozef DE CNODDER, et al.

Appln. No.: 10/026,690

Group Art Unit: 2619

Confirmation No.: 9306

Examiner: Anthony M SOL

Filed: December 27, 2001

For: MARKER DEVICE AND RELATED METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated November 15, 2007, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claims 1-3, 5-10, and 12-16 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Troxel (U.S. Patent No. 6,147,970) in view of Wang et al. (U.S. Patent No. 6,748,435, hereafter "Wang"). Claims 4 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Troxel in view of Wang and further in view of Chang et al. (U.S. patent No. 5,367,523, hereafter "Chang"). Applicant respectfully traverses the prior art rejections.

In the Amendment filed on August 28, 2007, Applicant argued that there is no teaching or suggestion in Troxel of the feature "if said actual value of said traffic reservation parameter exceeds said threshold value for said traffic reservation parameter, determining said packet

marking of and marking each of said packets based on said actual value of said traffic reservation parameter, and if said actual value of said traffic reservation parameter is below said threshold value for said traffic reservation parameter, determining said packet marking of and marking each of said packets based on a pre-assigned priority of the packet”, as recited in independent claim 1 and analogously recited in independent claims 8 and 16.

In response, the Examiner asserts:

Troxel discloses that high priority packets are compared to the direct value of token counter 90, whereas low priority packets are compared to the value of token counter minus the normal priority threshold value (see Troxel, col. 20, lines 46-51). Thus, even in the case of low priority packets being marked non-conforming, the pre-assigned priority of the packets is taken into consideration to determine what value the packets are to be compared against.²

Applicant respectfully disagrees with the Examiner’s position. The Examiner continues to take the position that this feature of the claim reads on the disclosure of column 20, lines 46-51 of Troxel. However, this cited portion of Troxel merely discloses a traffic policing method wherein high priority packets are compared to the value of a token counter 90, and low priority packets are compared to the value of the counter 90 minus a normal priority threshold value 94. When either type of packet is below the compared value, the packet is marked as “non-conforming”, and the non-conforming packets are dropped (column 20, lines 52-55).

Accordingly, Troxel does not disclose that if the actual value of a traffic reservation parameter is below a threshold value, packets are marked based on a pre-assigned priority of the

² Page 6 of the Office Action dated November 15, 2007.

packet, as claimed. In Troxel, the packets are marked as non-conforming based on whether they are below a threshold, and not based on their priority, since Troxel clearly discloses that if either type of packet (low priority or high priority packets) are below a compared value, they are marked as “non-conforming”.

Further, Chang and Wang do not cure the deficiencies of Troxel.

Accordingly, Applicant respectfully submits that independent claims 1, 8, and 16 should be allowable because the cited references do not teach or suggest all of the features of the claims. Dependent claims 2-7 and 9-15 should also be allowable at least by virtue of their dependency on independent claims 1 and 8.

Respectfully submitted,

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